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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,593	02/02/2001	Paul Andrew Erb	10642-US	6243
23553	7590	04/22/2004	EXAMINER	
MARKS & CLERK P.O. BOX 957 STATION B OTTAWA, ON K1P 5S7 CANADA			JACOBS, LASHONDA T	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,593

Applicant(s)

ERB ET AL.

Examiner

LaShonda T. Jacobs

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in United Kingdom on February 4, 2000. It is noted, however, that applicant has not filed a certified copy of the 0002500.7 application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims **1-4** and **20-22** are rejected under 35 U.S.C. 102(e) as being anticipated by Kaplan et al (hereinafter, "Kaplan", 6,456,594).

As per claims **1** and **20**, Kaplan discloses a method and system of optimizing a communication connection by providing a desktop with data for use in route selection (abstract, col. 3, lines 58-62 and col. 4, lines 16-28).

As per claims **2** and **21**, Kaplan discloses:

- wherein said data includes a selection of available media for routing said communication connection (col. 3, lines 58-67, col. 4, lines 1-15 and col. 5, lines 15-47).

As per claims **3** and **22**, Kaplan discloses:

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- wherein said data includes optimizing factors relating to each available media (col. 3, lines 58-67, col. 4, lines 1-15 and col. 5, lines 15-47).

As per claim 4, Kaplan discloses:

- wherein said desktop is a computer associated with a communications terminal at a source end of said communication connection (abstract, col. 3, lines 58-62 and col. 4, lines 16-28).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-19 and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaplan in view of Nelson et al (hereinafter, "Nelson", 2003/0147381).

As per claims 5 and 24, discloses a method and system of selectively routing communication connections through diverse media comprising:

- providing a computer associated with a first end system (abstract, col. 3, lines 58-62 and col. 4, lines 16-28);
- providing a lookup table in said computer, said lookup table storing a selection of media options for routing a communication connection, said lookup table further including

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optimization factors and connection protocols for each media option (col. 5, lines 15-47); and

- accessing said lookup table to select a media for routing said connection based on said optimization factors (col. 3, lines 58-67, col. 4, lines 1-15 and col. 5, lines 15-47).

However, Kaplan does not explicitly disclose:

- a second end system.

Nelson discloses systems and methods by which voice/data communications may occur in multiple modes/protocols including:

- a second end system (paragraphs 0005 –0006).

Given the teaching of Nelson, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kaplan by coupling a second end system to the switching system in order to communicate effectively over the network.

As per claims 6 and 25, Kaplan discloses:

- wherein said diverse media is selected from the group consisting of a Wide Area Network (WAN), Public Switched Telephone Network (PSTN), Telephone over Cable, Virtual Private Network (VPN), Satellite and Wireless networks (abstract, col. 3, lines 58-62 and col. 4, lines 16-28).

As per claim 7, Kaplan discloses the invention substantially as claimed.

However, Kaplan does not explicitly disclose:

- wherein said first and second end systems comprise telephone terminals.

Nelson discloses systems and methods by which voice/data communications may occur in multiple modes/protocols including:

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- wherein said first and second end systems comprise telephone terminals (paragraphs 0005 –0006).

Given the teaching of Nelson, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kaplan by coupling telephone terminals to the switching system in order to communicate effectively over the network.

As per claim 8, Kaplan discloses:

- wherein said communication is voice communication (col. 1, lines 16-32).

As per claim 9, Kaplan discloses the invention substantially as claimed.

However, Kaplan does not explicitly disclose:

- wherein said first and second end systems include video terminals.

Nelson discloses systems and methods by which voice/data communications may occur in multiple modes/protocols including:

- wherein said first and second end systems include video terminals.
- (paragraphs 0005 –0006).

Given the teaching of Nelson, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kaplan by coupling video terminals to the switching system in order to communicate effectively over the network.

As per claim 10, Kaplan discloses:

- wherein said lookup table includes dynamic and static optimization factors associated with each media option (col. 5, lines 15-47).

As per claim 11, Kaplan discloses:

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- wherein said optimization factors are selected from the group consisting of tariff, expense, latency, bandwidth and network load (col. 4, lines 16-67 and col. 5, lines 1-47).

As per claim 12, Kaplan further discloses:

- the step of providing means to monitor a connection and to reroute the connection in the event another one of the media options can provide a better service (col. 6, lines 42-58).

As per claim 13, Kaplan discloses:

- wherein said means monitors the connection at a set time after a connection has been set up (col. 6, lines 42-58).

As per claim 14, Kaplan discloses:

- wherein said means monitors the connection on a periodic basis (col. 6, lines 42-58).

As per claim 15, Kaplan discloses:

- wherein said connection is tested by sending a media file to a second end system and obtaining a comparison of the present connection with characteristics of said media file (col. 6, lines 42-58 and col. 7, lines 1-5).

As per claim 16, Kaplan discloses:

- wherein said end systems are for voice communication and said media file is an audio clip (col. 1, lines 16-32).

As per claim 17, Kaplan discloses:

- wherein said end systems are for video communication and said media file is a video clip (col. 1, lines 16-32).

As per claim 18, Kaplan discloses:

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- wherein said comparison sets an improvement level of a second media option with the current connection and a switch to a new media is made only if the difference in service exceeds the improvement level (abstract, col. 3, lines 58-62 and col. 4, lines 16-28).

As per claim 19, Kaplan discloses:

- wherein said lookup table identifies a selected media for routing a connection based on the identity of the second end system (col. 5, lines 15-47).

As per claim 26, Kaplan discloses:

- wherein said accessing means includes to reroute a connection after initiation if a new connection better matching a users preferences becomes available (col. 6, lines 42-58).

As per claims 23 and 27, Kaplan discloses:

- wherein said route selection information is stored in lookup tables in said desktop (abstract, col. 3, lines 58-62, col. 4, lines 16-28 and col. 5, lines 15-47).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,144,641 to Kaplan et al

U.S. Pat. No. 6,473,404 to Kaplan et al

U.S. Pat. No. 6,304,576 to Corley et al

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 703-305-7494.

The examiner can normally be reached on 8:30 AM - 5:00 PM.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 703-308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T. Jacobs
Examiner
Art Unit 2157

ltj
April 16, 2004


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SUPERVISORY PATENT EXAMINER
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